Supreme Court, U.S.
FILED

10-642 SEP 13 2010

OFFICE OF THE CLERK

No. _____

In The
Supreme Court of the United States

Phanendharnadh L. N. Kone,

Petitioner pro se,

v.

Virginia Department of State Police,

Respondent.

On Petition For Writ Of Certiorari
To The Virginia State Supreme Court

PETITION FOR A WRIT OF CERTIORARI

Phanendharnadh L. N. Kone
Petitioner pro se
14325 Clemons Drive
Midlothian, VA 23114
Cell phone no.: 571-230-7438

QUESTIONS PRESENTED FOR REVIEW

During petitioner pro se, Phanendharnadh L. N. Kone's (hereinafter "Kone") employment with Department of State Police (hereinafter "DSP") in the State of Virginia, supervisors of Kone issued wrong reports and wrong notices against Kone. During Kone's employment with DSP, DSP produced forged documents and falsified documents against Kone. Without correcting the forged documents and falsified documents produced by DSP, hearing officer, EDR Director in the State of Virginia and courts in the State of Virginia issued opinions with errors which caused irreperable damage to Kone. So, questions are presented below for review in this petition for writ of certiorari.

Why did the Supreme Court of Virginia issue it's opinion under Virginia Code Ann. § 17.1-410(A)(2) and (B) quoting a wrong reason, like lack of jurisdiction, when all events in this case occurred in Richmond, Virginia?

Why did the Supreme Court of Virginia issue it's opinion under Virginia Code Ann. § 17.1-410(A)(2) and (B) **without hearing the petitioner pro se when respondent forged documents and falsified documents and evidence is in favor of petitioner pro se?**

Why did the Court of Appeals of Virginia issue it's opinion without hearing the petitioner pro

se when respondent forged documents and falsified documents and evidence is in favor of petitioner pro se?

Why did the Supreme Court of Virginia deny the petition for appeal filed by petitioner pro se, Phanendharnadh L. N. Kone, when petitioner pro se included evidence which supports petitioner pro se's petition for appeal?

Why did the Supreme Court of Virginia allow respondent to cause reperable and irreperable damage to petitioner pro se in the form of lost wages, creating problems in precise weather monitoring and creating problems in automated health care?

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b) of the Rules of the Supreme Court of United States, the following list identifies all of the parties appearing here and before the Virginia State Supreme Court.

The Petitioner pro se and Appellant pro se below is Phanendharnadh L. N. Kone.

The Respondent here and Appellee below is Virginia Department of State Police and Virginia Department of State Police was represented in the Supreme Court of Virginia by:

William C. Mims, Attorney General,
Maureen Riley Matsen, Deputy Attorney General,
Peter R. Messitt, Senior Assistant Attorney General,
Ronald N. Regnery, Senior Assistant Attorney General, Lead Counsel of record for the Department of State Police
900 East Main Street
Richmond, Virginia 23219
Telephone: 804-786-5632
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The names and addresses of respondents from Virginia Department of State Police, EDR and hearing officer are:

Sergeant Brian K. Blackman,
Captain Edward L. Hope, Jr.,

Elaine C. Shepherd,
Mark T. Holland,
Abhishek Ghosh,
Alex Piven,
c/o Department of State Police
Information Technology Division
7700 Midlothian Pkwy.
Richmond, VA – 23235

Captain Timothy R. Evans
Agency Representative
Virginia State Police
Bureau of Criminal Investigation
9801 Braddock Road
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OPINION BELOW

The memorandum opinion per curiam of the Virginia State Court of Appeals is not designated for publication. This opinion is reprinted in the Appendix hereto, App. 1 - App. 5. The order dismissing the petition for appeal is reprinted in the Appendix hereto, App. 6 - App. 7. The order denying the petition for rehearing is reprinted in the Appendix hereto, App. 8 - App. 9. The order (with striken words) from the Circuit Court for the County of Chesterfield, releasing the $500.00 bond is reprinted in the Appendix hereto, App. 10 - App. 11.

BASIS FOR SUPREME COURT JURISDICTION

The Supreme Court of Virginia entered it's Opinion on April 9, 2010. App. 6 to App. 7. Petitioner pro se timely sought rehearing, and the Supreme Court of Virginia denied that petition on June 17, 2010. App. 8 – App. 9. The Circuit Court for the County of Chesterfield issued it's order releasing the $500.00 bond posted by plaintiff pro se to perfect his appeal to the Court of Appeals of Virginia on August 3, 2010. App. 10 – App. 11. Petitioner pro se now seeks review of that Opinion on a writ of certiorari.

This Court has jurisdiction under 28 U.S.C. § 1257 to review on a writ of certiorari the opinion of the highest court of a State.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED IN THE CASE

Due Process Clause of the United States Constitution, Fourteenth Amendment, U.S. Const. Amend. XIV, § 1:

> ... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws ...

Virginia State Policy of the Commonwealth; responsibilities of state agencies under this chapter, Virginia Code Ann. § 2.2-3000(A):

> It shall be the policy of the Commonwealth, as an employer, to encourage the resolution of employee problems and complaints. To that end, employees shall be able to discuss freely, and without retaliation, their concerns with their immediate supervisors and management. To the extent that such concerns cannot be resolved informally, the grievance procedure shall afford an immediate

and fair method for the resolution of employment disputes that may arise between state agencies and those employees who have access to the procedure under § 2.2-3001.

STATEMENT OF THE CASE

A. Summary of Facts

During petitioner pro se, Phanendharnadh L. N. Kone's (hereinafter "Kone") employment with Department of State Police (hereinafter "DSP"), supervisors of Kone issued wrong reports and wrong notices against Kone. During Kone's employment with DSP, DSP produced forged documents and falsified documents.

Kone realized that his supervisors are not competent and probably not qualified to assess his technical skills. Captain Edward L. Hope, Jr. (hereinafter "Hope"), Elaine C. Shepherd (hereinafter "Shepherd") and Mark T. Holland (hereinafter "Holland") were Kone's supervisors at DSP. Kone requested his supervisors to withdraw wrong reports and wrong notices which were issued against him. Kone did not receive any proper response from his supervisors.

Kone was always truthful and sincere to his duties. On the contrary DSP submitted forged documents and falsified documents and DSP's

decisions were not based on opinions from experts.

B. Course of Proceedings Below

Kone filed grievance form A of Department of Employment Dispute Resolution (hereinafter "EDR") as per employee grievance procedure. On October 20, 2008, Kone advanced his grievance to hearing. On December 16, 2008, a hearing was held at the DSP's location. William S. Davidson (hereinafter "Davidson") was the hearing officer for the hearing which took place on December 16, 2008. During the hearing on December 16, 2008, Kone mentioned that DSP produced falsified documents and Kone proved that his supervisors were not competent to assess Kone's skills. On the day of hearing i.e. December 16, 2008, all witnesses from Department of State Police failed to substantiate their allegations with source code and best practices in information technology. All allegations from Department of State Police are vague. On the day of hearing, all witnesses from Department of State Police were silent or ignorant about the best practices or standards in information technology.

Hearing officer failed to test and verify the credentials of witnesses submitted by Department of State Police. Witnesses submitted by the Department of State Police are not qualified and competent to assess the performance of Kone.

The hearing on December 16, 2008, was

recorded in two audio tapes. On December 16, 2008, Kone was placed on leave with pay. On December 23, 2008, Davidson issued his decision. Davidson's remarks about Kone's performance is not based on any expert's opinion or expert committee's review. Davidson's decision is silent about the importance or significance of Kone's supporting documentary evidence. Kone's supporting documentary evidence was not heard in the hearing.

On January 14, 2009, EDR received a letter from Kone. From this letter Kone requested administrative review of the hearing officer's decision. The ruling of EDR Director was silent about the forged documents and falsified documents which were submitted by DSP.

Pursuant to Virginia Code Ann. § 2.2-3006(B) Kone appealed the hearing officer's decision in the Circuit Court of Chesterfield County. Kone's appeal in the Circuit Court of Chesterfield County was dismissed. Pursuant to Rule 5A:6 of the Rules of the Supreme Court of Virginia Kone appealed from the final order of the Circuit Court of Chesterfield County in the Court of Appeals of Virginia. From a memorandum Opinion per curiam on November 24, 2009, Court of Appeals of Virginia summarily affirmed the decision of the trial court. Kone's petition for rehearing en banc was denied on December 23, 2009, by the Court of Appeals of Virginia. Pursuant to Rule 5:17 of the Rules of the Supreme Court of Virginia Kone timely appealed

the Opinion of the Court of Appeals of Virginia which was denied for lack of jurisdiction. Pursuant to Rule 5:20 and Rule 5:20A of the Rules of the Supreme Court of Virginia Kone timely requested a rehearing which was denied.

REASONS WHY CERTIORARI SHOULD BE GRANTED

Kone, provided a list of twenty two documents to the Court of Appeals of Virginia, in his Petition to Rehear En Banc. The list of twenty two documents is the list of forged documents and falsified documents produced by DSP. The memorandum opinion per curiam on November 24, 2009, from the Court of Appeals of Virginia is contradictory to the evidence. App. 1 – App. 5.

In the memorandum opinion per curiam from the Court of Appeals of Virginia it is written as given below (App. 2):

> Upon reviewing the record and briefs of the parties, we conclude that this appeal is without merit. Accordingly, we summarily affirm the decision of the trial court. See Rule 5A:27.

But the Court never reviewed the records belonging to the petitioner pro se. The records of petitioner pro se were present in the hard drives of petitioner pro se's computer and shared drives of

respondent. They had valuable information created by petitioner pro se for precise weather monitoring with correct future predictions, and automated healthcare. They also contain scripts, code and quality control reports generated by petitioner pro se. Petitioner pro se corrected many programs written by respondent.

In the memorandum opinion per curiam from the Court of Appeals of Virginia it is written as given below (App. 4):

> In the document appellant filed in the trial court entitled "Reply to Agency's Memorandum of Law in Opposition to Grievant's Appeal," appellant stated, generally, "[t]he decision of [the] hearing officer is 'contradictory to law.'" However, appellant did not "specify how that decision [was] 'contradictory' to law and what 'law' [was] thereby being contradicted."

But petitioner pro se, Phanendharnadh L. N. Kone, already informed Court that the hearing officer relied on the forged and falsified documents which were created by respondent. Hence, the decision of the hearing officer is contradictory to law.

In the memorandum opinion per curiam from the Court of Appeals of Virginia it is written as given below (App. 4 – App. 5):

> In addition, the issues appellant raised on appeal to the trial court involved evidentiary materials, witness competency and credibility matters, and the hearing officer's findings of fact, all of which were beyond the scope of review of the trial court pursuant to Code § 2.2-3006(B).

But, under Virginia Code Ann. § 2.2-3006(B) the Court can reverse the decision of the hearing officer. Virginia Code Ann. § 2.2-3006(B) does not restrict or limit Courts to obtain opinions from experts. Under Virginia Code Ann. § 2.2-3006(B) the Court can obtain opinions from experts or reverse the decision of hearing officer.

In the memorandum opinion per curiam from the Court of Appeals of Virginia it is written as given below (App. 5):

> "[B]ecause [appellant] failed to identify any applicable law that was contradicted by the hearing officer's decision, [appellant]'s appeal to the circuit court failed from its inception."

But, under Virginia Code Ann. § 2.2-3006(B) Court can reverse the decision of hearing officer. Court can punish respondents under Virginia Code Ann. § 18.2-168 for forging public records and Court can punish respondents under Virginia Code

Ann. § 18.2-472 for false entries by respondents. So, petitioner pro se, Phanendharnadh L. N. Kone, did identify all applicable laws. Surprisingly, Court never heard petitioner pro se but gave it's opinion with errors which can cause irreperable damage.

Kone produced substantial evidence of the unreasonableness of the respondent. Kone was deprived of all research and practical use of systems and software in public safety, precise weather monitoring, health care etc., and has been discriminated against. Without further detailing the evidence it is clear that Kone has produced substantial evidence of the unreasonableness of the respondent, hearing officer and EDR Director. DSP produced no evidence of the reasonableness of it's action. In fact the only evidence that respondent introduced was the falsified documents and forged documents. Therefore the reasonableness of the respondent's action is not fairly debatable. If Kone's petition is not granted than there is no assurance that DSP will not repeat the practice of forging documents or falsifying documents against Kone or anyone.

CONCLUSION

For all the foregoing reasons, Petitioner pro se, Phanendharnadh L. N. Kone, respectfully requests that the Supreme Court grant review of this matter.

Respectfully submitted,

Phanendharnadh LN Kone

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Cell phone no.: 571-230-7438

App. 1

COURT OF APPEALS OF VIRGINIA

Present: Judges Frank, Alston and Senior Judge Coleman

PHANENDHARNADH L. N. KONE

MEMORANDUM OPINION*

v. Record No. 0974-09-2 PER CURIAM

NOVEMBER 24, 2009

VIRGINIA DEPARTMENT OF STATE POLICE

FROM THE CIRCUIT COURT OF CHESTERFIELD COUNTY
Michael C. Allen, Judge

(Phanendharnadh L. N. Kone, *pro se*, on briefs).

(William C. Mims, Attorney General; Maureen Riley Matsen, Deputy Attorney General; Peter R. Messitt, Senior Assistant Attorney General; Ronald N. Regnery, Senior Assistant Attorney General, on brief), for appellee.

Phanendharnadh L. N. Kone, appellant, appeals a decision of the trial court affirming the decision of the hearing officer under the grievance procedure for state employees and dismissing appellant's appeal thereof. On appeal, appellant argues: (1) the trial court erred by not finding that

*Pursuant to Code § 17.1-413, this opinion is not designated for publication.

the hearing officer's decision was contradictory to law; (2) numerous documents admitted at his hearing were forged or falsified; and (3) his supervisors at the Virginia Department of State Police (VDSP) were not qualified or competent to assess his skills. Upon reviewing the record and briefs of the parties, we conclude that this appeal is without merit. Accordingly, we summarily affirm the decision of the trial court. See Rule 5A:27.

Appellant was formerly employed by the VDSP as a senior programmer/analyst. After receiving complaints about his work, appellant's supervisors met with him on several occasions to discuss his work performance issues. In August 2008, appellant received a Group II Written Notice for "[f]ailure to follow a supervisor's instructions, perform assigned work or otherwise comply with applicable established written policy."

Appellant challenged the issuance of the Group II Written Notice through the state employee grievance procedure. See Code § 2.2-3000 *et seq.* After an evidentiary hearing, the hearing officer found the VDSP met its burden of proof regarding the issuance of the Group II Written Notice. Appellant requested reconsideration of the hearing officer's decision, which was denied.

Appellant appealed his case to the trial court. In its order entered on April 8, 2009, the trial court found that appellant had "failed to

reference, cite and/or otherwise identify any statute (and/or other legislation), judicial precedent and/or accepted legal principle in support of his claim that the decision of the hearing officer was 'contradictory to law' – as required by Code § 2.2-3006(B) for the reversal of that decision." The trial court dismissed the appeal and affirmed the decision of the hearing officer. Appellant appealed the trial court's decision to this Court.

> [A] party appealing from a hearing officer's decision to a circuit court is required to "specify how that decision [was] 'contradictory' to law and what 'law' [was] thereby being contradicted." The appealing party must "identify [a] constitutional provision, statute, regulation or judicial decision which the [hearing officer's] decision contradicted."

Virginia Polytechnic Inst. and State Univ. v. Quesenberry, 277 Va. 420, 429, 674 S.E.2d 854, 858 (2009) (citations omitted).

> The General Assembly has articulated a very narrow standard of review to be applied by the circuit court in such appeals. Because this standard focuses solely on the question whether the hearing officer's decision is contradictory to any applicable law,

> the party appealing the hearing officer's decision properly bears the burden of identifying the law thereby contradicted.

Id.

"'Law' is the 'aggregate of legislation, judicial precedents and accepted legal principles.'" Virginia Dep't of State Police v. Barton, 39 Va. App. 439, 446, 573 S.E.2d 319, 323 (2002) (quoting Black's Law Dictionary 889 (7th ed. 1999)).

In the document appellant filed in the trial court entitled "Reply to Agency's Memorandum of Law in Opposition to Grievant's Appeal," appellant stated, generally, "[t]he decision of [the] hearing officer is 'contradictory to law.'" However, appellant did not "specify how that decision [was] 'contradictory' to law and what 'law' [was] thereby being contradicted." Quesenberry, 277 Va. at 429, 674 S.E.2d at 858 (quoting Tatum v. Virginia Dep't of Agric., 41 Va. App. 110, 122, 582 S.E.2d 452, 458 (2003)). As in Quesenberry, appellant "failed to identify to the trial court any applicable constitutional provision, statute, regulation, or court precedent of this Commonwealth that the hearing officer contradicted." Id.

In addition, the issues appellant raised on appeal to the trial court involved evidentiary materials, witness competency and credibility matters, and the hearing officer's findings of fact,

all of which were beyond the scope of review of the trial court pursuant to Code § 2.2-3006(B). "[T]he only grounds of appeal of the hearing officer's decision is 'that the determination is contradictory to law.'" Barton, 39 Va. App. at 445, 573 S.E.2d at 322 (quoting Code § 2.2-3006(B)). The hearing officer's decision is final and binding 'if consistent with law and policy.' Code § 2.2-3005.1(C)(iii)." Quesenberry, 277 Va. at 428, 674 S.E.2d at 858. "[B]ecause [appellant] failed to identify any applicable law that was contradicted by the hearing officer's decision, [appellant]'s appeal to the circuit court failed from its inception." Id. At 430, 674 S.E.2d at 859.

Appellant also requests that we remand this case to the trial court for an award of costs pursuant to Code § 2.2-3006(E). Code § 2.2-3006(E) provides that a court shall award an employee reasonable attorney's fees and costs if the employee "substantially prevails on the merits of a case brought under subsection B or D." Appellant has not substantially prevailed on the merits of the case. Therefore, we deny appellant's request.

Accordingly, we summarily affirm the decision of the trial court. See Rule 5A:27.

Affirmed.

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 9th *day of* April, 2010.

Phanendharnadh L. N. Kone, Appellant,

against Record No. 100154
Court of Appeals No. 0974-09-2

Department of State Police, Appellee.

From the Court of Appeals of Virginia

The Court dismisses the petition for appeal filed in the above-styled case for lack of jurisdiction. Code § 17.1-410(A)(2) and (B).

Justice Mims took no part in the consideration of this case.

A Copy,

Teste:

Patricia L. Harrington, Clerk

App. 7

By: /s/

Deputy Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 17th day of June, 2010.

Phanendharnadh L. Kone, Appellant

against Record No. 100154
Court of Appeals No. 0974-09-2

Department of State Police, Appellee.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 9th day of April, 2010 and grant a rehearing thereof, the prayer of the said petition is denied.

Justice Mims took no part in the consideration of this case.

A Copy,

Teste:

Patricia L. Harrington, Clerk

By: *original order signed by a deputy clerk of the Supreme Court of Virginia at the direction of the Court*

Deputy Clerk

VIRGINIA:

IN THE CIRCUIT COURT
FOR THE COUNTY OF CHESTERFIELD

Phanendharnadh L. N. Kone,	)
Plaintiff,	)
	)
v.	) **Case No. CL09-498**
	)
Virginia Department of State Police,	)
Defendant.	)

ORDER

It appearing to the Court that a bond in the amount of $500.00 was posted by ~~Defendant~~ Plaintiff to perfect his appeal to the Court of Appeals of Virginia, and that the Court of Appeals denied ~~Defendant's~~ Plaintiff's Petition for Rehearing. It further appearing to the Court that Supreme Court ended the matter by denying the Defendant's Petition, it is hereby

ORDERED, ADJUDGED, AND DECREED that the Clerk of this Court shall release the $500.00 bond posted by ~~Defendant~~ Plaintiff to perfect his appeal to the Court of Appeals of Virginia.

Signatures of the parties are waived pursuant to Rule 1:13 of the Rules of the Supreme Court of Virginia. Let the Clerk forward an attested copy of this Order to the parties.

ENTER: 8/3/2010

/SEAL/ /s/

Michael C Allen, Judge

A COPY TESTE:
JUDY L. WORTHINGTON, CLERK

BY /s/
DEPUTY CLERK